

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN BROADCASTING COS., INC.,
DISNEY ENTERPRISES, INC., CBS
BROADCASTING, INC., CBS STUDIOS
INC., NBCUNIVERSAL MEDIA, LLC, NBC
STUDIOS, LLC, UNIVERSAL NETWORK
TELEVISION, LLC, TELEMUNDO
NETWORK GROUP LLC, and WNJU-TV
BROADCASTING LLC,

Plaintiffs/Counterclaim Defendants,
v.

AEREO, INC.,

Defendant/Counterclaim Plaintiff.

Civil Action No. 12-CV-1540 (AJN) (HBP)

WNET, THIRTEEN, FOX TELEVISION
STATIONS, INC., TWENTIETH CENTURY
FOX FILM CORPORATION, WPIX, INC.,
UNIVISION TELEVISION GROUP, INC.,
THE UNIVISION NETWORK LIMITED
PARTNERSHIP, and PUBLIC
BROADCASTING SERVICE,

Plaintiffs/Counterclaim Defendants,
v.

AEREO, INC.,

Defendant/Counterclaim Plaintiff.

Civil Action No. 12-CV-1543 (AJN) (HBP)

**AEREO, INC.'S MOTION FOR EMERGENCY CONSIDERATION OF
PRELIMINARY INJUNCTION ISSUES UPON REMAND**

On June 25, 2014, the United States Supreme Court issued an opinion on the appeal of the Second Circuit's affirmance of this Court's denial of Plaintiffs' motion for a preliminary injunction. *Am. Broad. Cos., Inc. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014). The Supreme Court "reverse[d] the contrary judgment of the Court of Appeals," and "remand[ed] the case for further proceedings consistent with this opinion." *Id.* at 2511.

On July 9, 2014, the parties submitted a joint letter to this Court in which Plaintiffs expressed their intent to seek an immediate order enjoining Aereo's service based on the Supreme Court's decision. *See* No. 1:12cv1540, Dkt. No. 313 at 1. In that letter, Aereo asserted that no injunction should enter because the Supreme Court's finding that Aereo is a "cable system" governed by the 1976 amendments to the Copyright Act entitles it to a compulsory license pursuant to 17 U.S.C. § 111. *Id.* at 3. It likewise stated that prompt resolution of these issues is necessary because, in light of the Supreme Court's decision, Aereo temporarily suspended operations, but is continuing to incur enormous costs and expenses that put the continuing existence of the company in jeopardy. *Id.*

On July 31, 2014 the Second Circuit entered orders vacating the preliminary injunction order entered by this Court and remanding the case for further proceedings. *Am. Broad Cos., Inc. v. Aereo, Inc.*, 12-2786, Dkt. Nos. 346, 347; 12-2807, Dkt. Nos. 293, 294. This Court is now empowered to consider Aereo's eligibility for a Section 111 compulsory license. *Id.* Aereo therefore respectfully moves for emergency consideration of these issues and a determination that Plaintiffs are not likely to succeed on the merits of any renewed motion for a preliminary injunction because Aereo is entitled to a Section 111 compulsory license and thus does not infringe Plaintiffs' public performance rights.

As further grounds for and in support of this Motion, Aereo relies on and incorporates fully herein: (1) Aereo's Memorandum of Law in Support of this Emergency Motion; (2) the Declaration of Chaitanya Kanojia; and (3) the Declaration of R. David Hosp and Exhibits thereto, all of which are filed herewith.

Dated: July 31, 2014

Respectfully submitted,

AEREO, INC.

By its attorneys,

/s/ R. David Hosp

R. David Hosp (RH 3344)

Mark S. Puzella (admitted *pro hac vice*)

FISH & RICHARDSON P.C.

One Marina Park Drive

Boston, MA 02210

617.542.5070 (tel)

617.542.8906 (fax)

hosp@fr.com

puzella@fr.com

Seth Greenstein (admitted *pro hac vice*)

CONSTANTINE | CANNON, LLP

One Franklin Square

1301 K Street, NW, Suite 1050 East

Washington, DC 20005

202.204.3514 (tel)

202.204.3500 (fax)

sgreenstein@constantinecannon.com

Michael S. Elkin

Thomas Patrick Lane

WINSTON & STRAWN LLP

200 Park Avenue

New York, New York 10166

212.294.6700 (tel)

melkin@winston.com

tlane@winston.com

Jennifer A. Golinveaux (admitted *pro hac vice*)

WINSTON & STRAWN LLP

101 California Street

San Francisco, California 94111

415.591.1000 (tel)

jgolinveaux@winston.com

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ R. David Hosp

R. David Hosp